IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23507 of 2005
With
CIVIL APPLICATION No. 7425 of 2006
In SPECIAL CIVIL APPLICATION No. 23507 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVRAJ PUNJABHAI MAKWANA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS HARSHAL N PANDYA for Petitioner(s) : 1,
MS PANDIT, A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2.
MR HS MUNSHAW for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 27/07/2006

ORAL JUDGMENT

1. Heard the learned advocate Ms. Harshal N. Pandya appearing on behalf of the petitioner,

learned A.G.P. Ms. Pandit appearing on behalf of respondent No.1, learned advocate Mr. H.S. Munshaw appearing on behalf of respondent No.3 and though, notice is served, no appearance is filed in the present proceedings by respondent No.2.

2. Rule has been issued by this Court on 6th December 2005. Today, with the consent of all the learned advocates, matter has been taken up for final hearing.

3. According to the petitioner, he was appointed on 15th November 1983 as a daily wager clerk in the office of the Taluka Development Officer, Gadhada, Taluka Panchayat, District Bhavnagar. The State Government passed a resolution on 17th October 1988 granting the benefits of pay scale and other allowances to the daily wager working continuously as per Section 25(B) of the Industrial Disputes Act, 1947 under the various departments. The Executive Engineer, R & B Department, Bhavnagar District Panchayat passed an order granting the benefit by order dated 26th March 1991 of Government Resolution dated 17th October 1988 to the Daily Wagers who were in continue service as per Section 25-B of the Industrial Disputes Act, 1947. The Executive Engineer, Irrigation Department, Bhavnagar District Panchayat passed an order on 19th

September 1991 granting the benefits of Government Resolution dated 17th October 1988 to the daily wagers who has completed seven years service to put in scale of Rs.950/- to 1500/-. According to the petitioner, he had also put in more than seven years of service as a daily wagers where he made representation to the respondent authority seeking the same benefits which were granted to the other similarly situated daily wagers in view of the Government resolution dated 17th October 1988 as per office order 19.9.1991. The said benefit was granted to the petitioner on fixed pay of Rs.750/- with effect from 1st October 1988 and was also put on the work charge establishment of the Gadhda Taluka Panchayat by order dated 1st October 1988. The State of Gujarat, in its Panchayat Rural Housing and Rural Development Department, passed a resolution revising pay scale of daily wagers working on the work charge establishment under the different District Panchayat on 24th April 1998. Pursuant to the said Government resolution dated 24th April 1998, pay scale of the daily wagers working under the Bhavnagar District Panchayat has been revised. According to petitioner, the benefit of two circulars dated 19th September 1991 and 24th April 1998 are not granted to the petitioner though other similarly situated employees were getting the benefit of both the circulars. Therefore, petitioner had

made representation to the respondent authority seeking the same benefit which were granted to the other daily wagers. The request made by petitioner was rejected by Taluka Development Officer on 1st March 2005 on the ground that petitioner was appointed as daily wagers clerk. Therefore, petitioner is not entitled to get the said benefit. Therefore, according to petitioner, the action of the respondent authorities not to grant the full benefits of Government resolution dated 17th October 1988 and 24th April 1998 is illegal, arbitrary and discriminatory, therefore, the prayer is made to grant of the benefit of 17th October 1988, 24th April 1998 and 24th March 2006 which circular has been recently issued by the State Government. It is necessary to note that no affidavit-in-reply is filed by any of the respondent in main petition. However, on behalf of respondent No3, the affidavit-in-reply is filed against the present Civil Application No.7425 of 2006 which almost dealt with the merits of the matter, therefore, that has been considered as a reply against the main petition of respondent No.3 only.

4. The recent circular dated 24th March 2006 issued by State Government made clarification to the effect that service as a daily wager and work charge should have to be taken into account for considering / calculating the benefit of pension

and gratuity. This circular is applicable to all the work charge similarly to those who were entitled the benefit of Government resolution dated 17th October 1988. Therefore, on the basis of this, recent circular dated 24th March 2006. Learned advocate Ms. Pandya submitted that benefit of pension and gratuity also required to be given by the respondent on basis of the service rendered by the petitioner as a daily wager employee / work charge employee.

5. Learned advocate Mr. Munshaw has vehemently opposed and submitted that workman has not been regularly recruited by following due process of recruitment rules. He also submitted that petitioner is not entitled the benefit of Government resolution dated 17th October 1988 and no such benefit has been given by the respondent. He also submitted that he was merely daily wager clerk not entitled the benefits of 17th October 1988 and therefore, he is not entitled any benefit of retirement from the respondents. He also submitted that detail reply in Civil Application has been filed by respondent No.3 may be considered.

6. Learned A.G.P. Ms. Pandit submitted that Government has issued circular time and again which applied to the daily wager / work charge and Government has made clarification that

service rendered by daily wager / work charge, according to Government resolution dated 17th October 1988 should have to be taken in to account for the benefit of pension / gratuity.

7. I have considered the submissions made by all the learned advocates appearing on behalf of the respective parties, there is no much dispute between the parties about the record and proceedings produced before this Court. According to record of the petition Annexure 'E' page 20 is an order dated 7th October 1992 granted the benefit to petitioner on the basis of Government resolution dated 17th October 1988 after completion of five years service as a daily wager clerk with effect from 1st October 1988 fixing his salary Rs.750/- with other benefit as per the circular dated 17th October 1988. A detailed order has been passed by respondent No.3 on the basis of the Government decision as mentioned in page 21 that order should have to be implemented with effect from 1st October 1988.

8. In view of these facts that benefit under Government Resolution dated 17th October 1988has been given to the petitioner by order dated 7th October 1992 with sanction of the Government implemented with effect from 1st October 1988. Therefore, petitioner is entitled the benefit of Government resolution dated 17th October 1988

after completion of 10 years service, 15 years service and 20 years service as prescribed in the Government resolution. In the present case, the grievance is that after completion of ten years service, further benefit of increment and other benefits not given by the respondents, for which, according to petitioner, he is entitled and no retirement benefits pension / gratuity has been paid to the petitioner and therefore, this Court is required to further examine whether petitioner is entitled for such benefit as per Government Resolution dated 17th October 1988, 19th September 1991, 24th April 1998 and 24th March 2006 or not?

9. This Court has considered the question that whether daily wager is entitled for pension on the basis of Government Resolution dated 17th October 1988 or not? In case of ***Malek Umarkhan Alikhan v. State of Gujarat*** reported in ***2005-III L.L.R. 1065***, the relevant para 12 to 19 and 21 are quoted as under :

> “12. Thus, this section is having two facts defining the term 'continuous service' for the purpose of Chapter VA. Sub section (1) of section 25B of the ID Act provides that a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service

which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not legal, or a lock out or a cessation of work which is not due to any fault on the part of the workman and sub section (2) of section 25B of the ID Act provides that where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under the employer-

(a) for a period of one year if the workman, during a period of twelve calender months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
(i) one hundred and ninety days in the case of a workman employed below ground in mine and
(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is

to be made, has actually worked under the employer for not less than-

(i) ninety five days in the case of a workman employed below ground in a mine and

(ii) one hundred and twenty days in any other case.

13. These two sub sections (1) and (2) of section 25-B of the ID Act, 1947 have been interpreted by the Hon'ble Supreme Court in case of Workmen of American Express International Banking Corporation versus Management of American Express International Banking Corporation reported in AIR 1986 SC 458 and has observed that while calculating the actual working of 240 days in a year in respect of the workman, days of holiday and other festival holidays are required to be included and after including such holidays and festival holidays, if the workman has completed 240 days, then, he is entitled for the benefit of section 25-F of the I.D. Act, 1947. This aspect has been considered in paragraph 5 of the judgment by the Hon'ble apex court are to the effect that "the expression 'actually worked under the employer' cannot mean those days only when the

workman worked with hammer, sickle or pen but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statutes, standing orders etc." It has also been observed by the Hon'ble apex court in the said judgment that "We do not think that we are entitled to so constrain the construction of the expression 'actually worked under the employer'. The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression 'actually worked under the employer' is capable of comprehending the days during which the workman was in employment and was paid wages and we see no impediment to so construe the expression there is no reason why the expression should be limited by the explanation. To give it any other meaning then what we have done would bring the object of S. 25-F very close to frustration. It is not necessary to give examples of how S.25-F may be frustrated as they are too obvious to be sated."

14. In view of these observations made by the Hon'ble apex court in the aforesaid decision, expression of 'actually worked under the employer' has been made clear that if any employee is entitled for holiday after completing one year service under the statutory provisions, then, those holidays and other festivals for each year must be included in working days and after excluding those days of holidays and festivals, if the workman has completed 240 days in a year, such workman is entitled for the benefit of section 25-F of the ID Act, 1947. Similarly, this court has also examined the question of section 25-B(1) of the ID Act and clarified the provisions of section 25-B(2) but in the said decision, section 25B(1) was not interpreted by the apex court. That section 25B(1) has been interpreted by this court in case of MOTI CEREMIC INDUSTRIES Versus JIVUBEN RUPABHAI, reported in 2000(2) GLR 1558. The relevant observations made by this court in para 10 of the said judgment are reproduced as under:

"10. In view of the above

provisions, it is clear that sub section (1) of section 25B of the Act provides that the workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service. Continuous service would be interrupted only by two modes and that is by workman leaving the employment or employer terminating his service by dismissal or discharge. Mere absence of the workman without obtaining prior leave for a days would not put an end to the continuous service of a workman. Sub section (2) opens with the words "where a workman is in continuous service within the meaning of sub clause (1)" and these words unmistakably indicate that the legislature has desire and intention to cover the cause even of those workmen who were not in continuous service for the purpose of retrenchment. Mere fact that the workman had not worked for 240 days in some year/s during his long employment would not debar him from claiming entire amount of retrenchment compensation as provided under section 25F of the ID Act. Mere fact that

during some years in his long period, the workmen had not worked for 240 days is not an answer to deprive him of the retrenchment compensation by ignoring the entire period. Once it is proved and/or found that the workman is in continuous service, then, it is wholly immaterial whether he has worked for particular number of days in a particular year. The contingency which demands the worker to work for a period of 240 days as provided by sub sec. (2) of sec. 25B of the Act would come into play provided the workman is not in continuous service as required under section 25B of the Act.

"Both, on principles and on precedent, it must be held that section 25B(2) provides a situation where the workman is not in employment for a period of 12 calender months but has rendered service for a period of 240 days within the period of 12 calender months and commencing and counting the back ward from the date of retrenchment, if he has, he would be deemed to be in service for

> the purpose of sec. 25B and Chapter V-A and once it is found that the workman is in continuous service under section 25B(1) of the Act and the workman is satisfying the conditions and contingency mentioned in the said sub section (1), then, it is wholly immaterial whether he has worked for a particular number of days in a particular year. Contingency which demands the worker to work for a period of 240 days as provided by sub section (2) of section 25B would come into play provided the workman is not in continuous service as required under sub section 25B (1) of the ID Act."

15. Therefore, in view of the observations made by this Court as well as the Hon'ble apex court in aforesaid decisions and also in view of the definition of the term 'continuous service' given in section 25-B of the ID Act as interpreted by the apex court in case of American Express (supra), now, I am considering the effect of the Government Resolution dated 17.10.1988. Item 3 page 30 of the said Government Resolution dated 17.10.1988 provides

that those daily wager who has completed the service of more than ten years as provided under section 25(B) shall be considered permanent and such permanent labour shall be placed in the pay scale of Rs.750-940 plus other allowances. As per the said item 3 of the said GR, it has been resolved that such daily wagers should be given the pension, gratuity, general provident fund in accordance with the existing rules and regulations and they would be entitled for Sunday leave and national holidays leave over and above two leave per year as well as 14 days casual leave, 30 days' earned leave and 20 days half pay leave. Thus, bare reading of item 3 of the said resolution would make it clear that if the daily wager is satisfies that he has completed ten years service as required under section 25-B of the ID Act, 1947, then, he is entitled to become permanent employee of the respondent establishment. This is the only condition incorporated in item 3 of the said resolution dated 17.10.88 entitling the daily wager for claiming benefit of pension. Even the clarification which has been brought to the notice of this court. First item

No.2 is also making it clear that if the daily wager has remained in continuous service as defined under section 25B of the ID Act and similarly to consider the rest of the years, then, such workman is entitled for the benefit of the Government Resolution dated 17.10.88. Item 38 and 39 thereof also saying the same thing that if the daily wager has completed 240 days continuous service in each year as defined under section 25B of the ID Act, and if the workman has completed ten years of service on the basis of such calculation for every year, then, he is entitled for the benefit of pension from the respondent establishment. It is made clear in the said GR dated 17.10.88 as well as the clarification brought to the notice of this court that it has not been clarified that they are to consider section 25B(1) or 25B(2) but the State Government has mentioned 25B as a whole which includes both namely sub section (1) and (2). In view of that, it is the duty of the State Government to consider entire section 25B with sub section (1) and (2) of the ID Act while considering the entitlement of such workman for such benefits.

16. In view of the above observations, the net effect of section 25-B sub section (1) is to the effect that if the daily wager has remained in continuous service for a period of one year and his service has not been interrupted by any reason mentioned mentioned in sub section (1), whatever kind of cessation of work which is not due to the fault of the daily wager, then, his service must have to be considered continuous for a period of one year irrespective of the fact whether such daily wager has completed 240 days actual work or not during this one year. Reason is that during the one year, though the daily wager has not completed 240 days continuous service, but during that period also, the services of such daily wager has not been terminated by the employer and in-between the relationship of the employer and employee was remaining in force which makes continuous service of one year and that period must be taken into consideration irrespective of the fact that 240 days actual work has been completed or not by such daily wager but such daily wager has remained in service with the employer on permanent

employment and pensionable service. Similarly, in respect of sub section (2) of section 25B of the ID Act, if the daily wager is not remaining in service for a period of 12 calender months but even less number of months but he completes 240 days working, then also, that less number of months may be considered for one year continuous service. This being two distinct and different situation incorporated by the legislature in sub section (1) and (2) of section 25B of the ID Act, if the daily wager is satisfying either of the one, then his services must have to be considered continuous for a period of one year within the meaning of section 25B of the Industrial Disputes Act, 1947.

17. I have minutely perused the Government Resolution dated 17.10.1988. This Resolution has been issued by the State Government after having conscious decision and consulting all the respective departments of the State Government to give certain benefits similar to a permanent employee of the State Government to the daily wagers who are working in various departments. On the basis of the report submitted by

the Committee, said resolution has been issued by the Government in favour of the daily wager for regularization of their services after number of years. Item No. 1 of the said Resolution is relating to the daily wagers who have put in the service of less than five years. Such daily wagers shall be paid their daily wages in accordance with the existing Minimum Wage Rules and after completion of one year service with 240 or more actual working days, such daily wagers will be eligible for weekly off with pay, medical facility and festival holidays with pay.

18. As per item no.2, if the daily wager has completed more than five years but less than ten years service according to the provisions made in section 25B of the I.D. Act, 1947, then, such daily wagers are entitled to the basic salary of Rs.750.00 plus permissible dearness allowance and are also entitled for the benefit of weekly off, optional leave, 14 days CL and facility of leave with salary. Over and above that, they are also entitled for medical facility and provident fund as per item no.2. Item NO.3 is relevant for the

purpose of this case. It provides that those daily wager who has completed more than ten years service as per the provisions made in section 25(B) of the ID Act and such permanent labours will be eligible for being placed in the pay scale of Rs.750-940 with dearness allowance, house rent allowance, local compensatory allowance. It has also been resolved as per item no.3 of the said resolution that they should be given the benefits of pension, gratuity, general provident fund etc. in accordance with the existing rules. Over and above that, they will be given two days optional leave per year, 14 days casual leave, 30 days earned leave and 20 days half pay leave (medical leave) in addition to weekly off of Sunday and the leave of national festivals. Retirement age of such permanent labours will be of 60 years and the period of their continuous service will have to be considered as pensionable service.It is necessary to note that in respect of the present petitioner, the petitioner has received from the respondents an amount of gratuity and encashment of leave which is relating to item no.3 and, therefore, it is certain that the

petitioner has been satisfying the requirement of item no.3 of the said resolution that he has completed ten years service within the meaning of section 25B of the ID Act, 1947 and therefore, benefit of gratuity and encashment of leave has been granted in favour of the petitioner. If such benefits were paid to the petitioner, then, why the benefit of pension has not been given to the petitioner and why technical objection has been raised that he has not completed 10 years service wherein each year he is required to have continuous service of 240 days. This aspect has not at all been taken into consideration by the respondents. Not only that but from item no.1 and 2, the petitioner was entitled for weekly off and festival holidays with wages and then, why that period was not included in his actual working days as mentioned at page 33 certified by the Deputy Executive Engineer wherein only actual working days have been mentioned but in the actual working days, weekly off and the festival holidays for which the petitioner was entitled and received wages for such holidays were not included by the respondent department and, therefore, according to my opinion,

once the benefit of gratuity and encashment of leave relating to item no.3 has been granted by the respondents to the petitioner, then, there was no justification on the part of the respondents in denying the benefit of pension to the petitioner and why the days of actual work rendered by the petitioner alone have been considered without including therein the days of weekly off and festival holidays for which the petitioner was paid wages according to the said GR dated 17.10.88. If that would have been included in the actual working days of the petitioner for the year 1982 and 1983, then, there would not have been short fall for 240 days service for the said year and this question would not have arisen and the petitioner would have enjoyed the benefit of pension. All this has happened only because of the erroneous interpretation of the GR dated 17.10.1988.

19. In the matter of DS Nakara and Others versus Union of India, reported in 1983 SCC Lab & Service page 145, larger bench of the Hon'ble Apex Court has observed as under in para 41 :

"The last submission, the absence of precedent need not deter us for a moment. Every new norm of socio economic justice, every new measure of social justice commenced for the first time at some point of history. If at that time it is rejected as being without a precedent, the law as an instrument of social engineering would have long since been dead and no tears would have been shed. To be pragmatic is not to be unconstitutional. In its onward march law as a institution ushers in socio economic justice. In fact, social security in old age commanded itself in earlier stages as a moral concept but in course of time it acquired legal connotation. The rules of natural justice owed their origin to ethical and moral code. Is there any doubt that they have become the integral and inseparable parts of rule of law of which any civilized society is proud ? Can anyone be bold enough to assert that ethics and morality are outside the field of legal formulations? Socio economic justice stems from the concept of social morality coupled with abhorrence for economic exploitation. And the advancing society

converts in course of time moral or ethical code into enforceable legal formulations. Over-emphasis on precedent furnishes an insurmountable road block to the onward march towards promised millennium. An overdose of precedents is the bane of our system which is slowly getting stagnant, stratified and atrophied. Therefore, absence of a precedent on this point need not deter us at all. We are all the more happy for the chance of scribbling on a clean slate."

21. From the bare perusal of these working days certified by the aforesaid authority of the Panchayat, it is clear that in the year 1981, the workman has actually worked for 310 days, in the year 1983, the workman has actually worked for 235 days; in the year 1984, for 252 days; in the year 1985, 331; in the year 1986, 352 days; in the year 1987, 360 days; in the year 1988, 354 days; in the year 1989, 358 days; in the year 1990, 361 days and in the last year, he worked for 273 days. Meaning thereby, there is a short fall of 240 days in the year 1982 and 1983. In the year 1982, there is a short fall of 42 days and in

the year 1983, there is a short fall of five days. Keeping this factual position of the case before hand, and considering the observations made by the Hon'ble Apex Court in case of American Express (supra), (AIR 1986 Page 458, even if the holidays of the entire year in which the workman had worked are not included in the year 1982 and 1983 but only Sundays without any other holidays are included, the workman is entitled for salary of weekly off under the provisions of even the Minimum Wages Act and Rules framed under the Minimum Wages Act provides for such weekly off, such weekly off in a year would come to 52 and if such weekly off of 52 days is included with the actual working days of the petitioner for the year 1982, which is 198 (actual working days 198 plus 52 weekly off), then, it would come to more than 240 days. For the year 1983, the short fall is of five days alone. Therefore, even if the two months' weekly off is included, then, it would be completed 240 days in that year. The State Government has taken care of this aspect while issuing the said GR dated 17.10.88 which provides that the daily wager who has completed ten years continuous service would become

permanent employee and such a daily wager is entitled for retirement benefits like gratuity, provident fund, two days optional leave, 14 casual leave and 30 earned leave and over and above that, such workman is also entitled for weekly off and festival holidays. If the days as mentioned in item no.3 are included in the actual working days of the petitioner for the year 1982 and 1983, then, it would become clear that the workman has worked for more than 240 days during the year 1982 and 1983 and his service for the said years would fall within the definition of the term 'continuous service' given in section 25B of the ID Act. The resolution is, thus, quite clear but the interpretation thereof made by the respondents is erroneous which has deprived the petitioner of his legitimate right to get pension for the services rendered by him. I fail to understand the attitude on the part of the Panchayat authorities in not appreciating such an important aspect for a period of more than 12 years though the petitioner was time and again approaching and knocking their door either with befolded hands or with begging bawl in his hands crying for grant of pension but

all in vain as it has gone to deaf ears and the petitioner has thus deprived of the pensionary benefits as the for want of proper application of mind on the part of the respondent authorities. Though the resolution dated 17.10.1988 is clear, the authorities were taking technical stand by interpreting the same in their own manner which has deprived the petitioner of his legitimate right to receive pension for such a pretty long period of about 12 years. In view of these factual aspects, considering the effect of the GR dated 17.10.88, clarification brought to the notice of this court by the learned advocate Mr. Munshaw and also keeping in mind the provisions of section 25B(1) and (2) of the ID Act,1947 wherein the term 'continuous service' has been defined and also considering the decision of the apex court reported in AIR 1986 SC 458, and one decision of this court in case of Moti Ceramics, (supra), according to my opinion, the petitioner has completed ten years service as per the said GR dated 17.10.88 and is entitled for such pensionary benefits from the respondent authorities. I am also of the opinion

that the petitioner has been deprived of such legitimate right to receive pension for such a long period of about 12 years only because of the erroneous and incorrect interpretation of the GR dated 17.10.88. The legitimate claim of the petitioner for pension has been denied by the respondent authorities and on two occasions, he had approached this court earlier. Therefore, considering the prayers made by the petitioner in para 17(B) of the petition, where the petitioner has prayed for directing the respondents to release the arrears of his pension for this much period with 18 per cent per annum from the date of his retirement 31.10.1991 till the realization thereof in full considering his initial appointment on 21.2.1978 and also to direct the respondents to pay to the petitioner his monthly pension every month regularly and without any interruption.

10. Before going into the factual aspect, the Division Bench of this Court has on occasion to interpret the government resolution dated 17th October 1988 in ***Letters Patent Appeal No.1134 of 1997 in Special Civil Application No.11071 of 1993 with Civil Application No.8843 of 1997***

decided on 10th March 2004 in case of ***Karshan K. Rabari v. State of Gujarat***.

11. The relevant discussion interpreting the word 'permanent' which has been incorporated in Government Resolution dated 17th October 1988, Division Bench of this Court interpreted in Para 5 and 6 which are quoted as under :

> ***"5. The question for consideration is interpretation of Government Resolution dated 17-10-1988, whether the petitioners are entitled to all the benefits/facilities admissible to permanent Government employees after being made permanent or they are entitled to only those stated in the Resolution. Shri Yatin N. Oza, learned Senior Counsel contended that the petitioners cannot be described as daily wagers after issuance of the Resolution dated 17-10-1988. They have become permanent, therefore, they merge into the common pool of other permanent employees of the State Government. That being so, all benefits are admissible and available to them. Shri R.C.Kodekar, learned Assistant Government Pleader, submits that petitioners are not entitled to further facilities over and above the Resolution dated 17-10-1988. From the perusal of the records, it is absolutely clear that the***

Resolution dated 17-10-1988 is a result of settlement between the State Government and Gujarat Rajya Karmachari Maha Mandal, Gujarat Rajya Jaher Bandhkam Majoor Mandal, and various Associations, having made representations to the Government regarding pending questions since long time working under various Departments of State Government. Gujarati version of Committee Report wherein the recommendations mentioned under item 6(3) is that:

"3.xJr xbuJZSkbmUm 10 xfhsxRm xCnVbUm xUuDbm xRCl

xjua xQrZUr xDkaZm xiwLrLxi xCkVfnB xCUr xQrZUr xDkaZm

xZJnbu xFPfk. xSbrD xZJnbuUr xZkilD xbnVlak 750-940 xUk

xiwDrdZkB xVFkb, xZuBGfkbm xYRwRnB, xGbYkNnB,

xim.xCrd.xCr., xVrUwgU xCUr xFwbrJwanClLm xCUr

xJm.xVm.xCrW xfFrbr xUlaZ xVwbZkPrUk xdkYu xCkVfk. xDkaZm

xDrLrFbmfkek xZJnbuUr xSb xfbwhr 14 xSlfiUm xDlbDud xbJk,

30 xSlfiUm xjDwD xbJk xCUr 20 xSlfiUm xCTsxVFkbm xbJk

xCnVbkBQ xCMfkNlar xCrD xbJk xCUr xbkhwLwbma xQjrfkbuUm

xbJkCu xZegr. xCkFe xZeQm xZrNmDd xiFfNu xHkdnB xbjrgr.

xDkaZm xZJnbuUm xUlfpQwQlUm xfaZbwakSk 60 xfhsxUm

xbkEfkZkB xCkfgr xCUr xDkaZm xUuDbmUm xdBXkCl xVrUwgUVkQwb xFPkgr.

xjkd xSi xfhsxRm xfTkbr xirfk xCkVQk xbuJZSkbu xVsDm 15 xfhsx xVnbk xDbwak xjua xQrZUr xCrD xClJkWu 20 xfhsx xVnbk xDbwak xjua xQrZUr xXr xClJkWk xCUr 25 xfhsxRm xfTkbr xfhsx xUuDbmZkB xVnbk xDbwak xjua xQrZUr xQwbP xClJkWk 750-940 xUk xVFkb xiwDrdZkB xCkVfkZkB xCkfgr."

From the recommendations of the Committee, there is no manner of doubt that apart from the benefits expressly mentioned in Resolution dated 17-10-1988, other benefits are also admissible to the petitioners on their absorption into the permanent cadre by the State Government. "xfFrbr" means etcetera (in Hindi "xClQwakSm"). Instead of describing all the benefits admissible to permanent Government employees, the Committee has described some, and intended to include others by "xfFrbr" (etcetera). It is inclusive description of the items mentioned expressly in the Resolution. Such rights flow to permanent employees automatically from the relief of

regularisation to which no objection can reasonably be taken. (See Chief Conservator of Forests and another, etc. v. Jagannath Maruti Mondhare, etc. (AIR 1996 SC 2898). After having extended the benefits, the respondents cannot backtrack and dilute the Resolution dated 17-10-1988, and pass orders/instructions contrary to the said Resolution, simply because, it thought that extending these benefits would entail extra expenditure, which seems to be the cause for issuing clarifications and instructions. Any change in the Resolution could be discussed and decided in the same way in which the Resolution dated 17-10-1988 came to be passed. There is no justification to curtail the benefits given to the daily wagers in the said Resolution. Profitable it would be to refer to paragraph 28 of the Apex Court decision in Chief Conservator of Forests (supra):

> ***28. In so far as the financial strain on State exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forest Department itself the casual employees are about 1.4 lacs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement***

would be in the neighbourhood of Rs.300 crores a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first nor frightened by the second inasmuch as we do not intend that the view to be taken by us in these applies should apply, proprio vigore, to all casual labourers of the Forests Department or any other Department of the Government."

6. Therefore, what emerges out of the aforesaid discussion is that the petitioners are entitled to all the benefits available to permanent employees of the State Government under the Government Resolution dated 17-10-1988, and no order diluting/reversing the same can/could be passed by any other authority/functionary of the State Government. Accordingly, the Letters Patent Appeal is allowed. The communication/order dated 12-08-1991 is quashed. The petitioners are held entitled to all the benefits given to other permanent Government employees, which shall be made available to them by the respondents.“

12. Ultimately, Division Bench has allowed Letters Patent appeal and interpreted the Government Resolution dated 17th October 1988 to the effect that petitioners are entitled to all the benefits available to permanent employees of the State Government under the Government Resolution dated 17th October 1988 and no order diluting / referring reversing the same can/could be passed by any of the authority / functionary of State Government. Therefore, looking to the length of service as daily wages clerk having the benefit in salary as per resolution dated 17th October 1988, the petitioner has completed more than 20 years service, therefore, according to the Government resolution dated 17th October 1988, he become a permanent employee as interpreted by the Division Bench of this Court as referred above. Therefore, it is not in dispute between the parties the length of service of petitioner who has completed 21 years service with the respondents. Therefore, considering the undisputed facts of length of service, according to my opinion, petitioner is entitled for all the benefits of Government Resolution dated 17th October 1988, 19th September 1991, 24th April 1998 and 24th March 2006 being a permanent employee at par with Government employee including the benefit of pension / gratuity and other admissible benefits from the respondents. The

petitioner has retired from service on 30.11.2005 after completion of continuous service of more than 21 years service.

13. In view of this, present petition is allowed. It is directed to the respondents to pay all the benefits which accrued from the Government resolution dated 17th October 1988, 19th September 1991, 24th April 1998 and 24th March 2006 in favour of the petitioner with difference and arrears of wages and also pay all the retirement benefits as if that petitioner is being a permanent employee of the State Government / District Panchayat will get whatever benefit, same may be paid to the petitioner by respondents within a period of three months from the date of receiving the copy of the said order.

14. Accordingly, rule made absolute. No order as to costs.

15. In view of the order in main matter, there shall be no order on **Civil Application No. 7425 of 2006** and the **Civil Application stands disposed of** accordingly.

[H.K. RATHOD, J.]

#Dave